

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SHANE HOLLOWAY,)	
)	Civil Action No. 21-407
Plaintiff,)	
)	Judge Robert J. Colville
vs.)	
)	Magistrate Judge Maureen P. Kelly
JOHN WETZEL and LEE ESTOCK,)	
)	
Defendants.)	

ORDER OF COURT

Before the Court is defendants' motion to dismiss for failure to state a claim. (ECF No. 28). On March 22, 2022, the Honorable Maureen P. Kelly issued a Report and Recommendation (ECF No. 39) in which she recommended that the motion be granted. Plaintiff filed Objections (ECF No. 50) to Judge Kelly's Report and Recommendation.

The district court must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1)(C); *see also Henderson v. Carlson*, 812 F.2d 874, 877 (3d Cir.1987). This Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The district court judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Upon review of Judge Kelly's March 22, 2022 Report and Recommendation, Plaintiff's Objections, as well as a review of the entire record in this matter, it is hereby ORDERED as follows:

Plaintiff's Objections to the Report and Recommendation are overruled and the Court approves and adopts the Report and Recommendation in its entirety as the Opinion of the Court. Plaintiff has not sufficiently alleged a violation of his Eighth Amendment rights, and even if he were to be granted leave to amend, such amendment would be futile. The motion to dismiss (ECF

No. 28) is granted, and the Plaintiff's Complaint is dismissed with prejudice. The Clerk of Court shall mark this case as CLOSED.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R.App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: May 17, 2022

cc/ecf: All counsel of record

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